

Order 97-11-36

Served: November 26, 1997



UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 20th day of November, 1997

Essential air service at

NEW HAVEN, CONNECTICUT

under 49 U.S.C. 41731 *et seq.*

Docket OST-97-2915

ORDER AMENDING ESSENTIAL AIR SERVICE AND PERMITTING SUSPENSION

Summary

By this order the Department will take no action to prevent Continental Express¹ from terminating its essential air service at New Haven, Connecticut, at the end of its 90-day notice period on December 17, 1997. We will also update the community's essential air service (EAS) definition as service to any medium or large hub. Finally, because New Haven is within 70 highway miles of Hartford, Connecticut, and New York (LaGuardia), we are precluded by statute from paying subsidy to any carrier to provide service; thus, we may not require service beyond the end of a 90-day notice period.

Background

By Order 83-7-20 the Department defined essential air service for New Haven, Connecticut, as requiring two daily nonstop round trips to New York City, the primary hub, and two nonstop or one-stop round trips each weekday and weekend to Boston, the secondary hub. There was to be sufficient capacity to enplane 40 passengers a day at 65% load factor, or 62 seats in and 62 seats out of the community with 15-seat or larger aircraft. Unbeknownst to us at the time, in October 1989 Business Express terminated its New Haven-Boston essential air service without filing the requisite notice of its intent to suspend service; however, the community did not object to its termination. On September 17, 1997, Continental Express filed a 90-day notice to terminate all of its service between New Haven and New York (Newark), the community's primary hub. Continental Express's termination would deprive New Haven of all of its essential air service as defined in Order 83-7-20.

Decision

Since the essential air service definition for New Haven was issued in 1983 there have been significant developments. In addition to Continental Express's service to Newark, USAir Express provides seven daily

¹ On September 30, 1997, Atlantic Coast Airlines, Inc., d/b/a United Express, terminated its service between New Haven and Washington Dulles. We examined the amount of service that Atlantic Coast offered at New Haven and determined that it was less than one-third of the total capacity offered by all carriers, excluding Continental Express, which had appropriately filed a 90-day termination notice. Had United Express's service exceeded one third of the total service, Atlantic Coast would have been required to file a 90-day notice to terminate its service as well under the Department's one-third rule.

nonstop round trips to Philadelphia with 19-seat Beech 1900 aircraft and three daily nonstop round trips to Washington D.C. (National) with 38-seat Dash 8 aircraft. This level of service far exceeds the level of capacity required by New Haven's EAS definition.

Also, since the time that definition was established, in an effort to ensure that funds would be spent only for isolated communities, Congress has prohibited the Department from paying subsidy at communities that are within 70 highway miles of an FAA-designated medium or large hub airport. Bradley International Airport, a medium hub at Hartford, Connecticut, is only 50 highway miles from New Haven, and LaGuardia in New York City, a large hub, is only 69 highway miles from New Haven. New Haven's proximity to either of these airports precludes the Department from paying subsidy support for Continental Express's service, notwithstanding that New Haven would lose all of its essential air service as defined by Order 83-7-20.

Under these circumstances, there is nothing we can do to prohibit Continental Express from terminating its service to Newark. However, we will put USAir Express, the only carrier remaining at New Haven, on notice that New Haven remains an essential air service community subject to the Department's rules requiring 90-days' notice before service is terminated, and that the remaining service is subject to the Department's one-third rule, *i.e.*, no carrier may reduce its service at New Haven to such an extent that termination of such service would decrease total seats in and out of New Haven by more than one-third, without first filing a 90-day notice. For purposes of that notice provision, we will also redefine New Haven's essential air service as two round trips a day to any medium or large hub. Carriers intending to reduce service between New Haven and such hubs remain subject to the Department's notice requirements. If a carrier files a suspension notice in the future, we would again not be able to require the carrier to continue to provide service beyond the 90-day notice period, but the notice would afford New Haven with a 90-day transition period.

This order is issued under authority delegated in 49 CFR 1.56(i).

ACCORDINGLY,

1. We amend the essential air service definition for New Haven, Connecticut, to require two nonstop or one-stop round trips a day to any medium or large hub;
2. We will take no action to prohibit Continental Express from suspending its service at New Haven, Connecticut, effective December 17, 1997;
3. This docket will remain open until further order of the Department; and
4. We will serve copies of this order on the Mayor and airport manager of New Haven Connecticut, the Governor of Connecticut; the Connecticut Department of Transportation; USAir Express, and Continental Express.

By:

CHARLES A. HUNNICUTT
Assistant Secretary for Aviation
and International Affairs

(SEAL)